A SOVERAIGN

ANTIDOTE

TO

PREVENT, APPEASE,

AND

Determine our unnaturall and destructive Civill Warres and dissentions.

WHEREIN

Divers serious considerations tending to this purpose are propounded both to the King and Subjects, the Parliaments and Sir *Iohn Hothams* proceedings at *Hull* and in the *Militia* justified, Sr *Iohn Hothams* actions proved to be neither Treason, Felony, nor Trespas, by the Laws of the Land, nor any just ground or cause at all for his Majestie to rayse an Army, or a most unnaturall Civill warre in his Kingdome.

With a most serious Exhortation both to the King and subjects to embrace and preserve peace and abandon Civill Warres, with other matters worthy of consideration.

PROV. 12. 20.

To the Counsellors of peace is joy.

MAT. 6. 9.

Blessed are the Peacemakers, for they shall be called the children of God.

LONDON,
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A SOVERAIGN ANTIDOTE TO PREVENT APPEASE, AND Determine Our unnaturall and destructive Civill-Wars and Dissentions.

THE present deplorable condition of our bleeding and almost expiring Kingdom, machinating its owne unevitable ruine by a causeless, groundles Civill Warre, intended (as the *Parliament* informes us) by the King, (seduced through pernicious Counsellors) against the *Parliament* and the Kingdome, which intention is now apparant by his besieging of *Hull*, and raising an *Army* in the *North*, hath in a manner constrained me (though altogether vnable for such a service) to attempt the speedy redresse of this transcendent calamity, by propounding certaine materiall considerations, both to the *King* and *Kingdome*, and then by examining; whether there bee any just cause or ground at all on his Maiesties part to levie warre against *Hull*, the Parliament, his people, especially whilest the Civill-wars in *Ireland* have continuance.

(a) In sundry Declarations, and in certain Propositions concerning the raising of Horse, &c.

To avoid prolixity and obscurity, I shall reduce my considerations unto these ensuing foure *Propositions*, and the deductions from them.

First, *That it is the bounden duty of every good Christian King and Subject, to the uttermost of their powers, to preserve and maintaine the peace and prosperity of the Kingdomes wherein they live, and to prevent all Civill wars and Dissentions in them.*

This *Proposition* being of greatest consequence, I shall be more prolix therein, and it is thus proved.

First, by these generall precepts given by God, both to King and people, *Seeke peace and pursue it*, Psal. 34. 14. 1 Pet. 3. 11. *Follow peace with all men*, Heb. 12. 14. *As much as in you lyeth live peaceably with all men*, Rom. 12. 18. *Live in peace, be at peace among your selves, &c.* 2 Cor. 13. 11. 1 Thes. 5. 3. Ephes. 4. 3. Col. 3. 15. Rom. 14. 19. *Have peace one with another*, Mar. 9. 50.

Secondly, more particularly by the 1. *Tim.* 1. 2. *I exhort therefore, that first of all, Prayers, Intercessions, and giving of thanks be made for all men, for Kings, and for all that are in authority, that we may lead a quiet and peaceable life in all godlines and honesty:* compared with *Ier.* 29. 7. *And seeke the peace of the City, whether I have caused you to be carried away Captives, and pray unto the Lord for it, for in the peace thereof shall yee have peace.*

Thirdly, by that injunction of King *David* himselfe, given to all his people by Divine command, *Psal.* 122. 6. 7, 8. (b) *Pray for the peace of* Jerusalem, *they shall prosper that love thee, peace be within thy Wals, and prosperity within thy Pallaces, for my Brethrens and Companions sake*, I will now say, *peace bee within thee.*

(b) *Numb.* 6. 26.

Fourthly, by that speech of good *Hezechia*, Isa. 29. 8. 2. King. 20. 19. *Good is the word of the Lord which thou hast spoken, for there shall be peace and truth in my dayes.*

Fithly, by the titles given to God and Christ in *Scripture*, where God is oft stiled, *The God of peace*, Rom. 15. 33. c. 16. 10. 2 Cor. 13. 11. Phil. 4. 9. 1 Thes. 5. 23. 2 Thes. 3. 16. Hebr. 13. 10. *And Christ the Prince and King of peace*, Isa. 9. 6. Heb. 7. 2. By the severall promises of God in *Scripture, to give his people peace in their Land, to blesse his people with peace, to ordaine peace for them; to keep them in perfect peace, &c.* Levit. 26. 6. Psal. 29. 11. Isa. 26. 3. 12. c. 32. 17. c. 59. 13. c. 55. 12. c. 66. 12. Ezech. 34. 25. Hag. 2. 9. Zech. 8. 16. 19. By

Christs

Christs own Legacy, *Who bequeathed his peace unto his people*, Iohn 14. 27. Now if God be a *God of peace*, and Christ *a Prince and King of peace*, and both of them give and promise nothing but peace unto their people; Then Kings, *who are Gods & Vicegerents*, & ought to imitate his example, must endeavour to be *Kings of peace*, and study to the uttermost to preserve the Kingdomes and subjects in perfect peace and prosperity, and not to make warre against them. (c) 2 *Chron.* 9. 8. *Rom.* 13. 1, 2. 4. 6.

Sixthly, this is evident by two excellent speeches of *David*, Psal. 78. 70, 71, 72. *He chose* David *his servant, and tooke him from the Sheep-fold; from following the Ewes great with young, he brought him to feed* Jacob *his people, and* Israel *his inheritance; So he fed them according to the integrity of his heart, and guided them by the skilfullnesse of his hands.* By which text it is most most evident, that Kings are not absolute (d) *Lords*, but onely *Sheepheards* or *Pastors* of their people, set over them by God, not to worry or slay, but to feed, guide and seeke their (e) *Welfare*, in the integrity of their hearts, *to rule them with all gentlenesse, care and vigilancy*, provide for their *security*, Isa. 40. 11. *Ezech.* 34. 10. to 30. and if occasion be, *to lay down their very lives for the safety of their flocks, as good Sheepheards are willing to do.* Iohn. 10. 11. 15. and as King *David* desired to do, in this 2d. speech of his, worthy all Princes consideration; Hee seeing the *Angell that smote the people*, spake thus unto the *Lord, Lo, I have sinned and dealt wickedly, but these Sheep what have they done? Let thy hand I pray thee, be against mee and my fathers house, but not on the people that they should be plagued.* 2 Sam. 29. 17. 1 Chron. 21. 17. Answerable whereunto is that speech of the matchlesse Governour *Moses* (most zealous for his peoples safety) *who desired God to blot him out of his Booke, rather then to destroy the* Israelites *under his charge for their sin of Idolatry*, Exod. 32. 32. And when God said unto him, *Let me alone that I may consume them; for they are a stiffenecked people, and I will make of thee a great Nation*: He utterly refused this offer, and continued expostulating the case with God in Prayer in the *Israelites* behalfe, *Beseeching him to turne from his fierce wrath, and to repent of the evill against his people, till hee caused God to repent of the evill which he thought to doe unto his people*, Exod. 32. 9. to 15. Numb. 14. 11. to 21. O that all (d) See 1 *Pet.* 5. 2, 3. 4. (e) *Neh.* 2. 10. 2 *Chron.* 1. 10. 2 *Chron.* 9. 8. 2 *Sam.* 23. 3, 4.

Christian Kings and Princes were now so zealous of their peoples safety (as in truth they ought to be) they durst not then leavy warre against them, much lesse excite them to shed one anothers bloud.

If these divine precepts and examples bee not sufficient to cleare this shining truth, I shall adde some humane authorities to ratifie it, and that both of *Pagans* and *Christians:* To begin with *Pagans* Resolutions, it was a worthy saying of [f] *Pelopidas*, when, *going forth to Battle, his wife wished him to save himselfe, others* (quoth he) *are to looke to this, but a Prince and Emperour ought to take care how he may save his Subjects,* & a good Prince (writes Q. *Curtius*) *esteemes the safety of his subjects more deare unto him then his owne life.* It is an excellent Observation of [h] *Seneca*, that *though all other Bees have stings, which they leave in the wound yet the King among the bees hath no sting at all, for nature would not have him to be cruell, nor revengefull to his cost, and therefore hath taken away his sting, and left his anger unarmed. This should be a great example to mighty Kings, let them be not ashamed to learne manners from small creatures, seeing the minds of men ought to be more moderate, by how much the more vehemently it may do harme: Security is to be gained by mutuall security, &c. Kings have one impregnable fortification, the love of their subjects; which they shall then be sure of, when they deeme the Common-wealth not to be theirs, but they to be the Common-wealths.* And he concludes thus, [i] *There is no Ornament more worthy and more becomming a Princes Highnesse, then that Crown* ob cives servatos, *for preserving and saving his subjects: Not hostile Armes taken from the conquered not the Chariots of the Barbarians died with blood not the spoiels gained in warre.* Many more instances of this nature, I pretermit for brevity, to passe from *Pagans* to *Christians*, [k] *Constantine the great* was wont to say, *that an Emperour ought to spare, no not his owne members, for the preservation of the peoples tranquility.* Pope *Eluterius* in his [l] *Epistle* to our King *Lucius*, the first Christian King, about the yeare of our *Lord* 169. writes thus to him. *The Nations and people of the Kingdome of* Britaine *are yours, which being divided, you ought to congregate and reduce into one, to concord and peace: and to faith, and the law of Christ, and to the holy Church, to cherish, protect, maintain, governe and defend them from injuri-*

(f) Plutarchi Apothegmata

(g) Hist. l. 10. p. 486.

(h) De Clementia l. 1. c. 19.

(i) Ibidem. cap. 26.

(k) Zonarus Annal. Tom. 3. p. 117.

(l) Spelmanni Concil. p. 34. and in sundry other of our Writers.

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rious and malicious persons and enemies. A King is named from governing not from a Kingdome; Thou shalt be a King whilest thou rulest well, which unlesse thou shalt do, the name of a King shall not remaine in thee, and thou shalt loose the name of a King which God forbid.

Finally to close up this Proposition; the Kings of *England* (and so the Emperours with most other Christian Princes) doth take this solemn oath, and make this serious Protestation to their subjects at the Coronation, [m] *I will keepe peace and godly agreement intirely (according to my power) both to God, the holy Church, the Clergy and the People.* By which oath they are obliged, under pain of highest perjury, to preserve the generall peace of the Kingdome and people; to avoid all civill Warres, unlesse in case of their subjects open Rebellion, not any otherwise to be suppressed but by a warre against them: and not to arme one subject, to assault or destroy another. Neither is this a late devised oath, in *Henry* the fourth his time, but King *Henry* the first, King *Stephen Richard* the first, King *John*, and *Henry* the third, (as *Mathew Paris* records in their lives) tooke the same oath at their *Coronations*, and promised faithfully to fulfill it, and all our other Kings since have done the like.

(m) See Tottles Magna Charta, 1571. The Parliaments Remonstrance 26. of May, 1642. p. 9. And his Majesties Answer thereto. p. 16. 17.

From this first *Proposition*, thus aboundantly ratified, these conclusions necessarily ensue.

Conclusions deducted from the former Proposition.

First, that his Majestie cannot without great sin and willfull perjury rayse a Civill Warre against the Parliament and Kingdome, and excite his loving subjects (who have lived in peace for so many yeares, and are all of one Nation, one Religion, one flesh and blood) without any just cause, most unnaturally to destroy and murther one another, and so to ruine their owne native Countrey and undoe themselves and their Posterity.

Secondly, that no faithfull subjects ought to foment or promote such an unreasonable, unnatural Civill Warre, or give any assistance to it in the least degree upon any considerations whatsoever, but to the uttermost of his power by his prayers and all other lawfull meanes to prevent oppose and withstand it, for the preservation both of the King, Kingdome, Parliament, their own Liberties, Inheritances, Lives, Persons, Families

mflies Eſtates and Religion, and to unite all their Forces to extinguiſh the flames of civill diſſentions already kindled among us.

Thirdly, that thoſe malignant ſpirits who counſell and inſtigate his Majeſtie to a Civill-warre againſt his Parliament and people, are moſt unnaturall *Vipers*, and *Traytours to their Countrey*, deſperate Rebells againſt God, and moſt execrable wicked perſons, and ſo God himſelfe hath proclaimed them to all the world, *Iſa.* 59. 5. to 10. *They hatch Cokatrice egges, and weave the Spiders Webb; he that eateth of their egges dyeth, and that which is cruſhed breaketh out into a Viper, their workes are workes of iniquity, and the Act of violence is in their hands, their feet run to evill, and they haſt to ſhed Innocent blood, their thoughts are thoughts of iniquity, waſting and deſtruction is in their paths, the way of peace they know not, & there is no judgment in their goings, they have made them crooked paths, whoſoever goeth therein ſhall not know peace.* And *Rom.* 3. 13. to 19. *Their throat is an open Sepulcre, with their tongues they have uſed deceit, the poyſon of Aſpes is under their lips, their mouth is full of curſing and bitterneſſe, their feet are ſwift to ſhed blood, deſtruction and miſery are in their wayes, and the way of peace they have not known, there is no feare of God before their eyes.* O, miſerable unhappy Princes who are adviſed, ſeduced by ſuch pernicious Counſellors! O raſh & conſiderate wretched people, who are beſotted by them, ſo farre as to take up Armes againſt their native Countrey, to become their own, their Brethrens, the Parliaments, and Kingdomes Executioners, and thereby moſt * *deteſtable Traytours*! as all ſuch who take up Armes againſt the Parliament *are adjudged*, to be in the *Parliament* of 11. *R.* 2. the record whereof was publiſhed in print by Order of both Houſes, *May* 27. 1642. to which I ſhall reſerre you.

*Nullihoſtes digniores ſupplicio ſunt, quam ij qui contra patriam arma ſumunt. *Cicero ad Qu. Fratrem.*

Fourthly, that if the King againſt his Oath and Office, will without juſt cauſe make warre upon his Parliament and Kingdome, they may lawfully take up Armes for the preſervation of the Kingdomes peace, and their owne juſt defence, for when the King who ſhould protect them, will againſt the truſt and duty of his Royall Dignity, ſet himſelfe to deſtroy them; they having no other protection, may juſtly protect and defend themſelves, even as Souldiers, Children, Wives, Servants,

may

may by the equity of all Laws, lawfully by open force defend themselves against the bloody assaults and violence of their Generalls, Parents, Husbands, Masters, who seeke to take away their lives, though in all lawfull things they ought to be subject and obedient to them: If a King should causelesly run at a subject with a naked sword to kill him, the subject may lawfully put by his thrust and defend his life, which a King hath no power to take away, *but upon just grounds after a legall triall, and that in a legall, not an extraordinary way*, Much more then may the whole Parliament and Kingdome withstand a Kings open causelesse hostility against them, to preserve themselves and the Kingdome from destruction. This is evident even by divine Authority, as namely by the example of *David*, who though a subject * *tooke up Armes and raysed an Army to defend himselfe against King Saul his Soveraign, who causelesly made Warre against him and sought his life, and though he still avoyded Saul, and twice refused to hurt or murther his Person, when he was in his power, because he was Gods anointed*: Yet no doubt had *Saul* assaulted him with his Armie, he would have defended himselfe against him in Battel: Nay, this is manifest in an Higher Degree by that most Observable Passage in the 1 of *Samuel* 14. 39. to 46. Where when King *Saul* had made a Rash vow, *that whosoever had tasted any thing that day*, (contrary to his command, whiles he pursued the *Philistines*) *he should dye the death, though it were Jonathan his Sonne*; who procured that Victory *and the Lot fell upon* Jonathan, *who did but tast a little Honey on the top of his Rod*, who said, *and lo I must dye for this*; *Saul* answered *God do so, and more also, for thou shalt surely dye* Jonathan; *the people thereupon said to Saul* (notwithstanding, he were their King, and had made two such solemne Oaths) shall *Jonathan* die, who hath wrought this great deliverance in *Israel*? *God forbid*; as the Lord liveth, *that shall not one haire of his head fal to the ground, for he hath wrought with God this day, so the people rescued* Ionathan, *that he died not*. Here the people not only justly defend, but rescue *Jonathan*, being an Innocent from death, not onlie contrarie to the resolution, but vowes and Oaths of their owne King, to put him to death, and so doubtlesse they would have defended themselves by force in the like case. There is a notable place to this

* See 1 *Kings* 21. throughout 2 *Kings* 9. 25. *Exod.* 1. 16. to 22.

(n) 1 *Sam.* 22. to 27.

this purpose in the 1 of *Kings* 12,13. to 25. 2 *Chron.* 11. 1. to 5. *Where when the ten Tribes* (through *Rehoboams* following of the rash Counsell of the young men) *revolted and rebelled against him, being their lawfull King, and made Ieroboam King over them, Rehoboam, as soon as he fled from them and came to Ierusalem assembled all the Tribe of Iudah, and the House of Benjamin, an hundred and fourscore thousand men, which were Warriers, to fight against the House of Israel:* (who rebelled and revolted) *to bring the Kingdome againe to Rehoboam the Sonne of Solomon. But the word of God came to Shemajah the man of God, saying, Speake unto Rehoboam the King of Iudah, and unto all the house of Judah and Benjamin, and to the remnant of the people, saying. Thus saith the Lord, You shall not go up to fight against your Brethren the Children of Israel,* (though Rebells) *returne every man to his house, for this thing is from me. They hearkned therefore to the word of the Lord, and returned to depart, according to the word of the Lord, from going against Ieroboam and their Brethren.* Here God himselfe prohibits both King and people to raise a Civill-warre against their Brethren, though Rebells and Revolters in the highest degree, and they both lay downe Armes hereupon for the present. And when *Rehoboam* and *Abijah* his sonne afterwards made warre upon them; they did lawfully resist and oppose them, 1 *Kings* 14. 30. *c.* 15, 6. 2 *Chron.* 12, 15. and *chap.* 13. throughout. So the men on *Tirzah, being beseiged by King* Omri *to take* Zimri, *lawfully defended themselves for a time,* 1 Kings 16, 17, 18. and thus did those of *Bethmaachan against Ioab,* 1 Sam. 20, 14. to 23. To passe from Scripture presidents. Infinite are the examples in *histories* of subjects (who by the very dictate law of natur, wch instructeth every creature to defend it selfe against unjust violence) defended themselves in all ages against the assaults oppressions and groundlesse Warres of their unnaturall Princes. But the many late examples of this kinde of the *Protestants in France, Germany, and Bohemia,* who have by open force defended their persons, estates, Religion, against those Popish Kings and Governours, who have causelessly levyed Warre against them, (which act of theirs all Protestants affirme to be lawfull both by the lawes of nature, God and man) and our owne domesticke examples of the long continued *Barons*

Warres

Warres both in King *Iohns*, King *Henry* the thirds, *Edward* the seconds, and *Richard* the seconds Reignes who took up Armes against these Princes, for the just defence, preservation, and establishment of the Laws and Liberties of the Kingdome (which these Princes contended to subvert) even in times of Popery; which act of theirs, by the Prelates, Clergy and people of those times, and by all succeeding Ages since; was and hath been resolved, not onely lawfull, but [p] honest, just and honourable, and worthy eternal *Encomiums*, by meanes whereof our Kingdome hath quietly enjoyed those Lawes and Liberties, which they contended for, ever since, which otherwise had been long agone utterly lost, and the Kingdome with them; will aboundantly suffice to cleare and ratifie this conclusion, beyond all contradiction or exception of any malignant Spirits.

Fifthly, that it is lawfull and necessary for the Parliament for the preservation of the Kingdomes peace, and safety, its necessary defence, and the better prevention of Civill-warres, to settle the *Militia*, and secure the Magazines of the Realme by such meanes as may most effectually advance and accomplish this great much opposed worke, since His Majestie hath refused to passe a Bill to accomplish it. Neither is this way of setling the *Militia* a Novelty, but the most ancient practice and custome of this Kingdome, for it appeares by *King* * *Edwards Lawes*, that in his and former ages, the Lievtenants and supream Commanders of the *Militia* in every County, were elected; *per commune Concilium, pro communi utilitate regni, per provincias et patrias universas, et per singulas Comitatus, in pleno Falkemots* by the Common-counsell, for the common utility of the Realm; through every Province, Countrey and County, in a full Falkmoth or County Court by the Freeholders of the County. And if the Freeholders in ancient times did thus in every County elect their Lievtenants and Captaines of their *Militia*, to Train and Order them; yea, and the high Sheriffs too; who had the command of the whole power of the County, whom they then likewise elected as appeares by the same Law of

(o) See Matthew Paris, Hoveden, Walsingham, Speed, Stow, Graston, Matthew Westminster, Fabian, and others.

(p) Optime de meritis iunt qui et omnibus Laudibus digni, qui sua corpora pro patriæ defensione periculis ab jecerunt, Isocrates p. 108. Nihil est præstabilius viro forti, quam periculis patriam liberare. Cicero. pro. An. Milone, Orat. Mortes pro patria appetitæ, non solum gloriosæ Rhetoribus, sed etiam beatæ videri solent. Cicero. Tusc. Quæst. lib. 2.

* See Cookes Institutes on Magna Charta, fol. 174, 175. And Lege, Edwardi Regis cap. de Hereticis. in Lamberds Archion.

King *Edward*) by the ſame reaſon, and greater may the whole Parliament in this caſe of neceſſity lawfully elect them now, without any impeachment to his Majeſties Prerogative.

Sixthly, that His Majeſties late Commiſsions of *Array*, to enforce one ſubject to take up Armes againſt another, in effect to maintain a Civill-warre, & to impriſon thoſe who refuſe, contrary to the expreſſe Letter of *Magna Charta, c.* 29. the late Petition of Right 3. *Caroli*, (in the Anſwer whereunto His Majeſtie profeſſeth, that it is his Maxime, *That the peoples Liberty ſtrengthens the Kings Prerogative, and that the Kings Prerogative is to defend the peoples Liberties:*) Is directly (q) againſt the Law, and His Majeſties Coronation Oath, as the Parliament hath now lately proved it.

(q) See the Commons Declaration concerning the Commiſſion of Array, July 1. 1642. Where it is fully proved.

Seventhly, That to diſſwade and divert His Majeſtie from this Civill-warre, and ſhedding the blood of his innocent ſubjects, will be a moſt acceptable and meritorious ſervice both to God, the King himſelfe, and the whole Realme. To God it muſt be ſo becauſe he is a *God of peace*, abhorring all unnaturall Civill-warres, as is formerly demonſtrated. To the King himſelfe it muſt be ſo, becauſe it will exempt him from the guilt of perjury in violating his Oath, from the guilt of innocent blood and murther, in cauſing his people cauſeleſly to ſheath their Swords in one anothers Bowells; and from many other ſinnes and miſchiefs. To the whole Kingdome it muſt be ſo, which deſires peace and unity, & abhors the very thought, much more the ſight of an unnaturall Civill-warre, which will now in all probability, as things ſtand abroad and at home procure aboundance of miſery, if not utter ruine both to King and people. When (r) *David* by reaſon of *Nabals* churliſh Anſwer, had taken up a peremptorie Reſolution, *By the morning light to ſlay every one of Nabals houſhold that piſſed againſt the Wall. Abigail Nabals* wife hearing of it, went & met *David* and his Army in his March, to do this execution, and by her preſents and prudent ſpeech, diverted him from this his Reſolution. Whereupon *David* ſaid to *Abigail*, 1 *Sam.* 25. 32, 33. *Bleſſed be the Lord God of Iſrael which*

(r) 1 Sam. 25.

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ſent thee this day to meet mee, and bleſſed be thy advice, and bleſſed be thou, which haſt kept me this day from comming to ſhed blood and from avenging my ſelfe with mine own hand. O, that ſome diſcreet man or woman, could now divert His Majeſtie from his intended Civill-warre againſt *Hull*, the Parliament, and Kingdome, as *Abigail* here did *David*, certainely it would cauſe his Majeſtie upon due conſideration, to breake out into *Davids* words, and to bleſſe both God, their advice, and them, for keeping him from ſhedding his owne ſubjects innocent blood, & from avenging himſelfe with his own hand; neither of which becomes a gracious Prince, and may prove deſtructive both to himſelfe, his people, and Kingdomes.

The ſecond PROPOSITION.

THE ſecond *Propoſition* is this: That the King ought not to deny or deferr juſtice or right to any of his ſubjects, much leſſe to the whole Kingdom. This is manifeſted both by the expreſſe words of *Magna Charta*, c. 29. *Nulli vendemus, nulli negabimus vel differemus juſtitiam vel rectam.* and by many excellent Statutes ſince, as 2 *E.* 3. *c.* 8. 14 *E.* 3. *c.* 14. 20 *E.* 3. *c.* 1, 2. 1 *Rev.* 2. *cap.* 11.

It will then be worthy His Majſties ſerious ſecond thoughts to conſider.

Firſt, whether his voluntary withdrawing himſelfe from his Parliament to *York*, (which hath much retarded, if not wholly fruſtrated all Parliamentary Proceedings, ſince for the ſafety and wel-fare both of this Kingdome and *Ireland*) be not an apparant violation of this part of his Royall Duty.

Secondly, whither his peremptory refuſall to paſſe ſome neceſſary uſefull Acts, for the good of the whole Realme, upon a pretended diſcontent againſt the Parliament, and Sir *Iohn Hotham*, and a private vow (as ſome report) not to paſſe any Act whatſoever, till he received

juſtice in Parliament againſt Sir *John Hotham*: for the buſineſſe of *Hull*, and his refuſall to ſettle the *Militia*, for the ſafety of the Kingdome by Act of Parliament, or otherwiſe, be not an apparant breach of this truſt and parcell of his Kingly office.

Thirdly, whether his detaining of the Lord *Keeper* and great Seale at *Yorke*, whereby many ſubjects proceſſes, and cauſes have been delayed, their ſuites retarded, and ſome of them quite loſt, be not an apparant deviation from this Propoſition.

Fourthly, whether his abſolute denyall to diſcloſe the Accuſers & Informers againſt the Lord of *Kimbelton*, and other 5 Parliament men, that ſo they might acquit themſelves, and have right and juſtice againſt them for their malicious falſe ſuggeſtions, runs not point blank againſt this irrefragable Propoſition, and be not a flat denyall of common Right and Juſtice to thoſe eminent Perſons.

Fifthly, whether it be not an apparant violation and denying of Juſtice, for his Majeſtie to proclaime Sir *John Hotham* a Traytor, and demand Judgement againſt him as ſuch a one, before his cauſe was rightly ſtated, or reſolved to be Treaſon by any Court of Juſtice, or the Parliament.

Sixthly, whether his Majeſties rayſing of a Civil-warre at this very ſeaſon in *England*, his beſeiging of *Hull*, with his ſlighting and oppoſing the Parliament in open Declarations, even now during the heat of the bloody warrs in *Ireland* (by meanes whereof thoſe Iriſh Rebells are exceedingly encouraged, the Proteſtant Party and our Soldiers there much diſcouraged, and the Parliament now quite diſabled to ſupply them with Proviſions of Ammunition and money which they want, by means whereof the Rebells (now halfe ſubdued are like to regaine the Forts they formerly loſt, and in time wholly to conquer that Kingdome: and ſo utterly to extirpate the *Engliſh* Nationand Proteſtant Religion thence) be not a reall tacit denying and delaying of ayd right and juſtice to that diſtreſſed bleeding Kingdome, which now lyes and calls to

his

his Majeſtie and the Parliament for preſent ſuccours and ſupplies, which this now Civill-warre will in all probability totally fruſtrate to the great advancement of Papiſts and *Roman* Religion.

If all theſe particulars upon ſerious deliberation prove croſſe to this Propoſition & his Majeſties Regall Office, I preſume his graciouſneſſe, his Royall Love to right and Juſtice, and his compaſsion to almoſt expiring *Ireland* and *England*, is ſuch that he will ſpeedily redreſſe all former errors of this kind, put a ſpeedy period to our domeſticke Civill-warres, and move him never to run into the like exorbitances againe.

The third PROPOSITION.

THe third Propoſition, *That his Majeſtie hath no ſuch private or particular intereſt in the Forts and Townes or Magazines of the Realme, as the ſubjects have in their Lands and goods, to give, ſell, or diſpoſe of them at his pleaſure, but onely a publique intereſt by way of truſt, for the defence and preſervation of the Kingdome, and the ſecurity and tranquility of his people.* A truth worthy conſideration, when ignorance and incredulity hath lately occaſioned many grand inconveniences and miſtakes.

This is moſt apparant by this familiar demonſtration, for as much as the King hath no right or intereſt in theſe Forts, Towns, or Magazines, as he is a private perſon, but only in right of his Crowne, as he is King of *England*, and the publique Miniſter or Servant of the Kingdom to provide for its ſecurity and tranquility in times of warre or danger, and its proſperity in times of peace. Wee all know, that by the Law of the Land: the King cannot ſell or alien the Lands or Revenues of the Crowne, yea our Law-books and Judges have reſolved, [f] *that the King by his will cannot demiſe any of his Lands*: [t] *That though the King make a will and give Legacies of his own private goods which hee hath, yet he cannot demiſe the Iewells, Plate, Coronets and goods of the*

(f) 35. H. 6. 19. Fitz. Deviſe 5.
(t) M. 1. H. 5. Fitz Executors. 108.

Crowne. And if the [u] *King hath the body of a Ward, the temporalties of a Bishop* by way of sequestration in his possession, *or right to present to a Church that is void, and make his executors and dye, his Executors shall not have the Ward, temporalties, or presentation, though chattles, as a common persons executors shall have, but the succeeding King. So if Subsidies be granted, and the King dye before they are levyed, his Executors shall not enjoy them, though a chattle; but his Successor.* So the successor King, not the Kings Executors shall have all his Ships, Ordinance, Powder, Armes and Ammunition, though chattles, because they are not the Kings, but Kingdomes, and purchased with the Kingdomes money, 1 *Eliz. cap.* 19. 1 *Iac. c* 23. because the King hath not only his Lands, but even these very Chattles in right of his Crown, as King, not as a private person, for the benefit of the Kingdome. When King *Iohn* most unworthily (with the consent of some of his *Barons*) resigned his Crowne and Kingdome of *England* to the Pope, *Philip* the *French* King though his enemy, declared this Act void. [y] *Because no King nor Prince can give away the Kingdome, which is the Common-wealths, and all the Noblemen of* France *there present, begun to cry with one voyce, that they would stand to this truth even to death.* This matter of this Kings grant made to the Pope, being proposed and discussed in full Parliament in the 40 yeare of *Edward* the third, [z] *Vpon full deliberation the Prelates, Dukes, Earles, Barons, and Commons answered, and resolved with one accord; That neither the said King* John, *nor any other, can put him, nor his Realme, nor his people under such subjection without their assent, and as by many evidences it appeareth, if it were done, it was done without their assent, and contrary to his owne Oath at his Coronation.* And besides this, *the Dukes, Earles, Barons, Gentlemen and Commons, do accord and agree, that in case the Pope shall enforce or attempt by Proces, or by any other manner of doing to constraine the King or his subiects to performe this* (as it is said hee will) *these parties will resist with all their puissance.* So that by the Resolution of this whole Parliament, the King cannot grant away his whole Kingdome, without his peoples consent, in Parliament, and by the selfe same reason, not any part, parcell, Towne, or Fort thereto belonging, they being

(u) 7. H. 4. 17. 41 Br. Prerog. 8. 14. E. 3. 42. 21. E. 3. 39. 11. H. 47. Cooke. l. 9. f. 97. Fitz. Qu. Imp. 35. 53, 54. 115. 118. 189. Livery. 23. Presentment at Esglise 11, R. attachment 18.

(x) 21, E, 4, 45, b.

(y) Mathew Paris Hist. Minor; in Ioan. Dr, Crakenthorpe of the Popes temporall Monarchy, c. 2. page 251, to 255.

(z) Rot. Parl. An, 40, E, 3. nu, 8.

being the Kingdomes, not the Kings owne right. The *Civilians* of forraign parts disputing of the pretended *Donation of Constantine the great* of *Rome, Italy*, and Supreame jurisdiction there, to the Pope, resolve this [a] *Donation void, because the Emperour by Law cannot give away any of his Empire it being contrary to his Coronation Oath: wherein hee sweares,* [b] *to maintain the Dignities and Rights belonging to the Empire, that he will not impaire the goods and state of the Empire, but keepe inviolable the Rights of his Kingdome, and the honour of his Imperiall Crowne.* By vertue of which Oath, *they hold the Emperour strictly obliged in duty both to God and the Empire, to take to themselves, not onely all those large and faire Territories, which the Pope hath taken, either by force or fraud invaded; decking himselfe with the Eagles plumes; but specially they ought to resume that Dominion in those very Lands which the Pope now challengeth as his owne, by force of this forged grant.* [c] *Baldus* a learned *Civilian* writes: *That the Doctors of the Law determine, That* Constantines *pretended Donation neither is nor possibly can be of force, to passe away, either the propriety or supreame Dominion in those Territories, or the Imperiall jurisdiction over them. For to say that the Emperour would by his Donation mutilate, or cut away the Members of the Empire is a kinde of folly.* [d] *Arctine* not onely assents to *Baldus*, but much commends his judgment therein, *Baldus* (saith he) *doth elegently teach, that the Emperour cannot give away any quotient, neither a third, nor 4th. part, nor halfe of his Empire.* Whereby *Baldus* meanes, *that the Empire being an intire and universall power, the Emperour by giving ought, ceaseth not to be universall Lord of all belonging to the Empire.* [e] *Lucas de Penna*, is very pregnant in this point. *The Royalties of the Empire* (writes he) *cannot be alienated from the Emperour. Yea, though the Emperour should sweare, that hee would not revoke such Royalties as were alienated to the preiudice of his Crowne and Dignity, yet notwithstanding this his Oath hee might recall such alienations, because the Emperour sweares at his Coronation, to keepe safe the honours and rights of his Kingdome: but by alienating his demaines and Territories, he doth not preserve but impaire the Imperiall Rights.* [f] *Albericus de Rosate* is copious in this case. *Let us see* (saith he) *whether* Constantines *Donation could be of force to prejudice his Successors, Accursius* holds

(a) See Doctor Crakenthorps Defence of Constantine c. and p. 161. to 175.

(b) Mat. Paris Anno 1110. p. 206. Baldus in Proœmio de Feud, nu. 32.

(c) Lucas de Penna, Cod. de omni agro desert. l. Quicunque desertum: f. 185. col. 2. In Proœmio de Feud. nu. 32, 33.

(d) In Rubric. fide verbo obligat.

(e) Cod. de Omni argo deserto. l. Quicunque. f 184, 185.

(f) De Quodcunq. præscript. l. Bene a Zenone. nu. 4. & 6. & 14.

holds it could not, ſo doth *John de Pariſiis*, *And he gives this reaſon thereof: Becauſe none deputed to an office, may do ought againſt his own office. But it is againſt the office deputed to the Emperour, to impaire his Empire, or cut or take away any part from it. For by the ſame reaſon that he cuts away one part, he may cut away alſo another, and ſo may his ſucceſſors, and ſo the Empire at laſt ſhould be brought to nothing, and utterly deſtroyed which is againſt the publique good, and the end why the Empire is ordained; Whereupon I doe believe, that the foreſaid Donation by law cannot be of force to prejudice the Empire or the Succeſſors.* The ſame Doctrine is delivered for Law by *Boetius Epon* Herric. qu. qu. 3. nu. 43. queſt. 5. nu. 19. 27. 34. by *Didacas Coverrumius* Practic. qu. c. 4. nu. 1. by *Franc. Vargas*. De Author. Pontifi Axiom. 1 Num. 2. *Gulielmus*, *Benedictus*, *Caralus*, *Degroſſatus*, *Felinus*, with others. All which I have cited, to ſhew the concurrence of the Civill with our common law in this particular, and to reſolve all oppoſites in this point, who ſcruple at it.

Deductions from hence.

First, From all theſe Premiſes it is apparant; 1. that the caſe of Sir *Iohn Hotham*, and the *Towne of Hull*, was not rightly ſtated by His Majeſtie in his *Declaration* ſent in a Meſſage to both Houſes, the 21. of *May*. 1642. To wit, *that his Majeſty hath the ſame Title to his Towne of Hull, which any of his Subjects hath to their houſes, or Lands, and the ſame to his Magazine and Munition there, bought* (as he ſaith) *with his own Moneyes.* When as many, or moſt of the Armes there, were againſt law, violently taken away from the ſubjects in *Eſſex*, and other Counties (who bought them with their own Moneyes) without paying any conſideration for them, and the other was purchaſed with the 8 *Kingdomes* Money, with which his Majeſtie was but intruſted, which any of his ſubjects have to their Money, Plate, or Jewells, and therefore that they ought not to be diſpoſed without his conſent, no more then the houſe, Land, Money, Plate, or Jewells of any ſubject ought to be without or againſt their Remonſtrance in anſwer to that Declaration, *May* 26. *page* 4, 5, 6. To which I ſhall referre you

(g) See 1 Eliz. c. 19. 1 Iacobi. c. 33.

Secondly, That the King having no intereſt in *Hull*, or

or the Magazine there, but only as King and the publique Minister of the Kingdome, for the Kingdomes use and benefit, and the preservation of its security and peace, it is and was lawfull for the whole Kingdome assembled in Parliament, (upon probable grounds and Informations and proofes, that his Majestie seduced by some pernitious Enemies to the Kingdomes tranquility, intended to seize upon this Towne and Magazine by surprise, thereby to let in forraigne Forces, and raise a Civill-warre against the Parliament and Kingdom, to the disturbance of the publique peace, and hazard of the Realmes of *England* and *Ireland*, and contrary to the publique trust reposed in him, (the breach whereof doth in some sort determine it for the present) to turne those Arms and Ammunitions provided for his subjects safety, upon them to their destruction) to seize upon and secure them for the present, for the prevention of this danger and abuse of them, the Kingdomes better security (the true ends for which this Town and Magazine was first fortified and provided:) And that without any danger of *Treason* and disloyalty in them or their Agents, imployed in this service. Neither is this any new case, for both in the well knowne [h] *Barons* Warrs in this Realme, and late stirs in *Scotland*, the *Barons* and *Scots* seised upon the Kings Townes, Castles and Ammunition, for the security and peace of these severall Kingdomes, without any danger or charge of Treason. And if it were no Treason in the *Scots* within these two yeares to seize upon all or most of His Majesties Townes, Forts, Magazines and Ammunition in *Scotland*, and on *Newcastle* in *England*, for the common peace and safety of their Kingdome and prevention of Civill-warrs, as his Majestie and the Parliaments both of *Scotland* and *England* have resolved, why should it be Treason or Felony in the *Parliament* or Sir *John Hotham* their Agent, peaceably to possesse themselves of the Towne and Magazine of *Hull*, for the safety of the Realme, the prevention of Civill-warres and preservation of the publique peace, when as they keepe them onely for his Majesties and the Kingdomes use, and are ready to redeliver them into his Majesties actuall possession,

(n) See Mathew Paris, Holinshead, Speed, Grafton and others, in the lives of King Iohn, Henry 3. Ed. 2. Rich. second.

(:) See the Acts of Pacification 12. H. 8 2. 22. E. 4. 25. l. 1 H. 7. 7. 5. H. 7. 6. Barre. ( ) 102.

ſeſsion, if they may be ſecured: that they may not be miſimployed againſt them. *If a Conſtable or any other perſon breakes into another mans houſe and take away his ſword and Armes, and arreſt him to preſerve the peace and prevent murther, he may by the common Law juſtifie this Act, and detaine the others weapons till the fray be over, and the peace ſecured*; Yea, if a man ſhould detaine his Majeſties ſword or Piſtoll from him, in caſe he intended cauſeleſly or unjuſtly to murther any of his ſubjects with it, till his wrath were paſt, I preſume it would be neither Treaſon, Felony, nor any illegall miſdemeanor, much leſſe can it be any Treaſon, or offence in the Parliament, or Sir *Iohn Hotham* their Inſtrument, upon juſt ſuſpitions to poſſeſſe themſelves of the Towne and Magazine of *Hull*, in a peaceable manner, and to ſequeſter and detaine them from his Majeſtie for a ſeaſon, till they may have good aſſurance, that neither of them ſhall bee miſimployed, by the inſtigation of miſchievous Counſellors, to the hurt or deſtruction of the Kingdome, and them, as they are informed Wars are intended to be. But more of this hereafter in Deduction 4.

Thirdly, admit the caſe of *Hull* and the Magazine there, ſuch as his Majeſtie puts it, yet then by his Majeſties Argument, every ſubject hath as good and firme an interreſt, and property in his owne goods, Lands, Houſes, as his Majeſtie hath in his *Towne of Hull*, or his *Magazine*. By what Law or Juſtice then hath his Majeſtie ſeiſed lately upon his ſubjects Armes and Magazines in divers Counties, bought with their own Moneys, for their own private, and the publique defence of the Realme againſt Theeves and Forraigne Enemies, and forceably taking them away without paying for them, and now imployed them in a Civill-warre, againſt *Hull* and his ſubjects? Doubtleſſe the Parliament may with farre more juſtice and equity, ſeize upon the publique Magazine of the Kingdome, and *Hull* (a frontire Towne well fortified) for the ſecurity of the Realme, and prevention of Civill-warres, then his Majeſtie ſeize upon his ſubjects Armes and Magazines of powder to make a Civill warre. And ſeeing the Armes at *Hull* were many of them violently and illegally

taken

taken from the ſubjects without conſideration, why the Parliament may not lawfully ſeize them to reſtore them to their owners, who have petitioned for them, I cannot yet diſcerne.

Fourthly, In caſes tending to the common good and ſafety, even by the common Law of the Land, a man may lawfully commit a treſpaſſe, and do an injury to another mans Lands, Houſes, and Inheritance without crime and offence: *If an enemy invade the Realme, any* [l] *Generall Captain or ſubject to reſiſt them may lawfully enter into any other mans Land, and there dig Trenches build Forts and Sconces* (if they be neceſſary) *to reſiſt the Enemie*: Yea, he may enter into any of the Kings Forts and Townes which are onely for the publique good (as the experience of all ages teſtifie) without any previous ſpeciall Licence, yea fortifie and defend them: becauſe it tends to the ſafety of the Realme and common good to which all privat intereſts, and much more the Kings publique in ſuch caſes muſt give place. Upon this reaſon it is agreed in our [n] Law-bookes, *That if a Towne or City be beſieged or in danger to be beleagured by an enemy, and the Suburbs may endanger the taking thereof by yeelding harbor, or a convenient battry to them, The inhabitants or Souldiers within the Walls, may lawfully burne or deſtroy the Suburbs for the Townes or Cities preſervation, and the common ſafety.* Nay, *if an houſe be on fire in a Towne, men may juſtifie the pulling downe thereof, and of the next* adjoyning houſes if there be cauſe, *to prevent the burning of the whole Towne, it being for the Common good:* Yea, [o] *Fiſhers at Sea may juſtifie their going on other mens ground adjoyning to the Sea, becauſe their fiſhing is for the common profit of the whole Realme.* If then private perſons, may thus legally prejudice other particular men in theſe caſes in their Lands and Houſes, for the common good, then much more may the whole repreſentative body of the Kingdome in Parliament ſeize upon *Hull* and the Magazine there for a ſeaſon (being the Common-wealths, and the Kings onely in right of, and for the ſervice of the Kingdome) for the publique peace and ſafety, and the prevention of Civill-warres, without any danger of treſpaſſe, much leſſe of Treaſon, in making

(l) 8 E. 4. 23. Br. Cuſtone, 145.
(m) 29 H. 8. Dyer. 36. 6. Br. Treſpas, 406.
(n) 13. H. 8. 16. 9 E. 35 b. Br. Treſpas 426.
(o) 8 E. 4. 19. Fitz. Barr. 93.

Sir *Iohn Hotham* their Agent in this Service: They having a common intereſt therein, ſince Souldiers, Citizens, and other private perſons may lawfully raiſe Forts and Trenches on others grounds, or pull down any houſes and ſuburbs for the publique good, though they have no particular intereſt in their lands or houſes, but onely a temporary common intereſt upon theſe publique occaſions.

The fourth PROPOSITION.

THe fourth Propoſition is this. *That in all doubtfull caſes of Treaſon, not within the expreſſe Letter and words of* 25 *E.* 3. *Parl.* 5. *c.* 3. *neither the King himſelfe, nor his Iudges, but the Parliament, and King in Parliament,* (if hee will be there) *ought to declare and determine what act is Treaſon, and what not.*

This is cleare by theſe expreſſe words of 25. *E.* 3. *c.* 3. of Treaſon. *And it is accorded, that if any other caſe, ſuppoſed Treaſon, which is not aboveſpecified* (in this Act) *doth happen before any Iuſtices, the Iuſtices ſhall tarry without any going to judgement of the Treaſon, till the cauſe be ſhewed and declared before the King and his Parliament, whether it ought to be iugded Treaſon or Felony.* Which clauſe was afterwards ratified by 11 *R.* 2. *c.* 3. 1 *H.* 4. *c.* 10. and by 21 *R.* 2. *c.* 11. where Iudge *Thorning* affirmes, *That the Declaration of Treaſon not declared, belongeth to the Parliament,* which part of declaring Treaſon, ſome hold is utterly taken away by 1 *Mariæ. Seſſion.* 1 *Raſtall* Treaſon, *Sect.* 20. (which others deny) and that no other Treaſon is, or can be at this day (unleſſe by ſpeciall Act of Parliament,) but what is within the very Letter of 25. *E.* 3. *c.* 3.

This being indubitable, theſe Concluſions will neceſſarily follow.

Firſt, that neither his Majeſtie alone, nor yet accompanied with his privy Counſell or Iudges, hath any legall power or right at all to declare or determine what is Treaſon and what not, or to declare or adjudge any particular

Act

Act to be Treason, unlesse it be clearely within the expresse Letter of 25. *E.* 3. *c.* 3. Therefore his Majesties own private [p] *Declaration* of Sir *Iohn Hothams* Act (in seising the Towne and Magazine of *Hull*, and his refusall to admit his Majestie into the Town when he came to dispossesse him of it) to be Treason, being out of the Letter of the 25. *Ed.* 3. and his *proclaiming of him to be a Traytour*, must necessarily be both void and illegall.

(p) See his Majesties Answer to the Declarat on May 4. 1642. P. 3. 10. 11.

Secondly, The Kings Judges and Justices, even in Courts of Judicature, where they may finally determine and resolve what is law in all other cases, neither can may, nor ought to declare and determine what is Treason, and what is not, in any cases out of the very Letter of 25. *E.* 3. but ought to refert to the Parliament, and receive a resolution from them, whether it be Treason or not. So are the expresse words of this Act of 25. *E.* 3. and others since. If then the Judges are thus to be resolved by the Parliament onely, what is Treason and what not, then there is no reason or sence, why the Parliament should be sent to the Judges to be advised and resolved by them, what is Treason: or why the Parliament should be taxed for Voting Sir *Iohn Hothams* Act not to be Treason, *without consulting first with the Judges*, to know of them whether it were Treason or not. Since the Parliament in this case of Treason, are to direct and resolve the Judges, not the Judges them.

Thirdly, both Houses of Parliament upon the Kings Appeale to them for justice against Sir *Iohn Hotham* as a Traytour, for not admitting him into *Hull*, and upon Sir *Iohn Hothams* Letter to them, relating the truth of his whole carriage to the King in this cause, have acquitted Sir *Iohn Hotham*, and [q] Voted this Act of his, (warranted by the command of both Houses) not only to be no Treason nor Felony, but not so much as a Misdemeanour, seeing all he did was only in discharge of the trust which the Parliament had reposed in him, for the safety and peace of the whole Kingdome, and prevention of a Civill-warre. Since then the whole Parliament, the onely proper Judges of Treason, upon the *Kings* and Sir *Iohn Hothams* several

(q) See the printed Votes.

rall appeales to them, have both voted and reſolved Sir *John Hotham's* Act to be no Treaſon, nor Crime, nor he to be any Delinquent, neither the King himſelfe (who oft profeſſeth in his late Declarations to rule and governe all his people onely according to the Laws of the Realme, according to his Oath) nor his Counſell, nor Judges can by any Proclamation or Declaration, or by any Judgement in any Court of Juſtice, which hath Conuſance of Treaſon, declare this Act of his to be Treaſon, or him a Traytour or Offender. Let all of them, and the whole Kingdome both for the preſent and future, reſt fully ſatisfied, and concluded by the Parliaments Votes and Reſolutions: whom our Lawes declare, to be the onely proper Judges of this cauſe pretended to be Treaſon, and ſo Sir *John Hotham* muſt go ſcot-free.

Having thus paſſed through theſe foure *Propoſitions*, and the Deductions from them, I ſhall now draw towards a concluſion of this Diſcourſe.

Sir Iohn Hothams caſe and wills truly ſtated and debated.

The onely, if not principall pretence of his Majeſties late raiſing an Army in the *North*, and of a moſt ſad and unſeaſonable Civill-warre (which if proceeded in, may ſoone prove deſtructive to all his Majeſties three Kingdomes) is Sir *John Hothams* ſeiſing on the Towne of *Hull*, and the Magazine there by Order from the Parliament, for the peace and ſecurity of the Realme, and his denying his Majeſtie entrance into the Towne, when he came to take poſſeſſion of it: Which Acts his Majeſtie hath in his *Proclamations* and *Declarations*, declared and proclaimed to all his ſubjects to be no leſſe then *high Treaſon*, and Sir *John Hotham* to be a notorious Traytour.

The ſole queſtion then will be, *Whether theſe Actions of* Sir John Hotham *be Treaſon or not by the Laws of the Realm?* And under correction, I conceive it is as cleere as the Noone-day Sunne, that they are no Treaſon.

That his taking poſſeſſion of this Towne and Magazine is no Treaſon: no nor yet ſo much as a Treſpaſſe or offence in point of Law, I have ſufficiently demonſtrated in the premiſes. *Whether his denying his Majeſtie*

(r) Propoſition third, Section 2. 4. and elſewhere.

to

to enter Hull, and his keeping poſſeſſion of it, be high Treaſon, will there be the ſole queſtion, which before I ſhall determine, I ſhall truly ſtate the caſe.

(1) See the Declaration and Votes of the Houſe in Sir John Hothams caſe, which they there truly ſtate, Aprill 28. 1642.

(1) Sir *John Hotham* by Order of both Houſes of Parliament was enjoyned to keep poſſeſſion of the *Towne and Magazine at Hull*, for the prevention of Civill-warres, and preſervation of the peace and ſafety of the Realme (which ſome malignant Spirits adviſed his Majeſtie to ſeize on, and turne againſt the Kingdome) and not to deliver them up to any whatſoever, without their ſpeciall Order.

The King on the 23 of *Aprill* rode to *Hull*, attended with about 400 Horſe, (the *Duke of Yorke* and *Prince Elector*, being at that inſtant royally entertained by Sir *John Hotham* in the Towne, who came thither the day before) and required Sir *John Hotham* to deliver up the Town into his hands. Who perceiving his Majeſtie to be accompanied with ſuch force as might have maſtered the Garriſon of the Towne, and having received Intelligence of an intention to deprive him of his life, if the King were admitted, informed his Majeſtie, of that truſt repoſed in him by both Houſes, that he could not admit him into the Town without breach of that truſt, and therefore humbly beſeeched his Majeſtie to give him leave to ſend to the Parliament to acquaint them with his Majeſties commands, and to receive their directions thereupon; which hee would do with all expedition. His Majeſtie rejecting this Anſwer, preſently cauſed him and his Officers to be proclaimed *Traytors* before the Towne Walls, and diſpatched a Meſſage to both Houſes, charging Sir *John Hotham* with high Treaſon, aggravating his offence, and demanding Juſtice againſt him. The Parliament upon true Information and ſtating of the caſe, the 28. of *Aprill* 1642. reſolved upon the *Queſtion*.

That *Sir John Hotham according to his Relation, had done nothing but in obedience to both houſes of Parliament. That this declaring Sir* John Hotham *Traytor, being a Member of the houſe of Commons, is an high Breach of Priviledge, and being done without proceſſe of Law, is againſt the liberty of the ſubiect, and the Law of the Land.*

This

This being the true ſtate of the caſe; I ſhall clearely manifeſt by the Law of the Land, this Act of Sir *Iohn Hothams* to be no Treaſon, and he no Traytor.

It is irrefragably evident by the Statutes of 1 *E.* 6. *c.* 12. and 1 *Mariæ* 1. *Seſſion*, *Raſtall Treaſon* 20. that there is no Treaſon at this day but what is within the very Letter of 25 *E.* 3. *c.* 3. all other Treaſons being repealed by theſe Acts or expired. The *Queſtion* then will be, *Whether this caſe be within the very Letter of* 25. *E.* 3? Certainely there is not one ſyllable in this Act which concernes this caſe. The King pretends it is within theſe words, *If any man do levy Warre againſt our Soveraign Lord the King in his Realme*, that it is *Treaſon* by the Letter of this Act. But here there is no levying of war, no act of hoſtility or war was exerciſed by Sir *Io. Hotham*, againſt the K. Sir *Io. Hotham* was onely paſſive & defenſive not active, he only denyed his Majeſtie the poſſeſſion of the Town by order from Parliament, to prevent warre and preſerve peace and if he be a Traytor, the whole Parliament muſt be much more Traytors who put him upon this ſervice, *Qui* 2 *plus peccat Author quam Actor*, as our Law determines. Therefore this neither is, nor can be any leavying of Warre againſt the King, or Treaſon within this clauſe: This is moſt apparant by the Statute of 5. and 6. *Ed.* 6. *c.* 11. Which becauſe the detaining of the Kings Forts from him, was not within the words or intention of 25. *Ed.* 3. did ſpecially enact, *That if any perſon or perſons after the firſt of June Rebellionſly* (marke the word) *do detaine keepe or with-hold from our Soveraign Lord his heires and ſucceſſors, any of his or their Caſtles, Fortreſſes, or holds within this Realme, or any other the Kings Dominions or Marches: Or Rebellionſly keepe detaine or with-hold from his ſaid highneſſe his heires or ſucceſſors any of his or their Ships, Ordinances, Artillery, or other Ammunitions or Fortifications of Warre, and do not obediently render and give up unto our ſaid Soveraign Lord, his heires or ſucceſſors or ſuch perſons as ſhall be deputed by them, ſuch Caſtles, Fortreſſes, Fortileſſes, Holds, Ships, Ordinances, Artillery, or other Munitions, or Fortifications of Warre, rebellionſly kept or detained within ſix dayes next*

after they ſhall be commanded by our ſaid Soveraigne Lord his Heires or Succeſſors, by open Proclamation under the great Seale, the ſame Proclamation to be made in ſuch place and order, ſo as the party and parties to be charged by this Act may conveniently have notice or knowledge thereof, that then every ſuch perſon or perſons ſo offending in any the Premiſes, their Abbettors, &c. Being lawfully convicted of the Rebellionſly keeping or detaining thereof according to the Lawes and Statutes of this Realme, ſhall be adjudged Traytors, and ſhall ſuffer paines of death, and loſe and forfeit all their goods and chattles, Lands and Tenements unto the King, as in caſes of high Treaſon. This Act makes the detaining of any of the Kings Caſtles, Forts, &c. Treaſon, But yet with theſe three Limitations.

Firſt, that they muſt be *Rebellionſly kept and with-held*; which *Hull* was not, but onely by Order of Parliament for the Kingdomes peace and ſafety.

Secondly, that they muſt be *detained ſix dayes* at leaſt, after command to ſurrender them: But the King proclamed Sir *Iohn Hotham* a Traytour for not delivering up *Hull* the ſame day and houre he demanded it, without giving him any reſpite, which is contrary to this Act.

Thirdly, There muſt be a Proclamation under the great Seale to demand the Forts and Caſtles, and the ſame Proclamatiō muſt be ſo made that thoſe who detain them may have notice of it. But in this caſe there was no ſuch Proclamation made againſt Sir *Iohn Hotham*, but by an herald by word of mouth, and ſo no Treaſon within the Law, admit it were in force: But this Law and clauſe (which if in force might have given ſome colour to his Majeſtie) as all Judges and Lawyers reſolve, was totally repealed by the ſtatute of 1 *Mariæ. Raſtall Treaſon* 20. (which expreſly repeales all other Treaſons but thoſe within the very Letter of 25. *E.* 3.) and ſo the detaining of any Forts or Caſtles at this day from the King is no Treaſon becauſe not within the words of 25. *E.* 3. *chap.* 3. the onely Standard and ſurviving Law to judge Treaſons by.

This Statute of 5. *Ed.* 6. *c.* 11. being repealed, and this caſe being not within the Act of 25. *E.* 3. the Parliament

in 14. *Eliz.* was enforced to make a speciall Law (which was *to endure only during the Queenes life*, as appeares by the last proviso in it) whereby they enact, *that if any person or persons whatsoever, do unlawfully, of his or their owne Authority,* (which is none of Sir *Iohn Hothams* case, who did nothing but by order of Parliament) *compasse, imagine, conspire, or devise by any wayes or meanes with force or craft &c. Maliciously or Rebellious ly* (which he did not but by authority of Parliament) *to take, detaine, or keepe from the Queene, any of her Castles, Towers, Fortresses, or holds, &c. And do advisedly by any expresse word, speech, act, deed or writing, utter or declare his said malicious and rebellious intents, that then every person or persons so offending in the Premises, being thereof lawfully convicted according to the Lawes of the Realme, shall be adjudged a Felon or Felons, and suffer paines of death as in cases of Felony, &c. And if any person or persons, do at any time hereafter with force Maliciously and Rebelliously* (which is none of Sir *Iohn Hothams* case, who did all by the Parliaments command) *detaine, keepe or withhold from the Queenes Majestie any of her Castles, Towers, Fortresses, or holds within the Realme, or any of her Dominions or Countries, or Marches of the same, or do Maliciously and Rebelliously or with force detaine, keepe or withhold from her Majestie any of her Ships, Ordnance, Artillery, or other Munitions or Fortifications of Warrs, and do not render and give up the same to our Soveraigne Lady, or such persons as her Majestie shall appoint to receive the same to her use within six dayes next after he or they so offending, shall be commanded by our Soveraigne Lady the Queene, by open Proclamation under the great Seal of England, to be made in any place or Market Towne within the County where any such offence shall be committed, &c. that then every person or persons so offending, their Ayders, Counsellors and Abbetters, being thereof Lawfully convict according to the Lawes of the Realme, shall have and suffer such paines of death, and also shall forfeit and lose, as in cases of high Treason limitted and acustomed,*

By this expired Act, which was to continue onely during the Queenes life it is evident.

First, that this detaining of the Kings Castles, Forts, Ships and Ammunition, is no Treason within 25. E. 3.

(for

(for then this Law had beene idle and ſuperfluous, eſpecially being to continue, but during the Queenes life) and ſo there can be no Treaſon at this day in Sir *Iohn Hothams* Act.

Secondly, That no detaining or with-holding of ſuch Caſtles, Forts, Ships and Ammunition is Treaſon within theſe particular acts, but that which is done *maliciouſly and Rebelliouſly*, and *continued ſix dayes after a Proclamation under the great Seale, and proclamed in the County, to deliver them up unto the Queene*, or her ſubſtitutes for her uſe. Now Sir *Iohn Hotham* detained *Hull*, and denyed his Majeſtie to ſeize and enter it, not *Maliciouſly* and *Rebelliouſly*, but in obedience to the Parliaments command, which intruſted him to keepe it for the preſent both for the King and Kingdomes uſe, for the prevention of Civill-warres and danger to the Realme, and the excluding of forraigne forces which might be landed there, neither did his Majeſtie make any Proclamation under his great Seale, or give him ſix dayes ſpace to deliver it up. Therefore this Act of his is and can be no Treaſon, neither within the particular expired forecited Acts were they in force, much leſſe within 25. *E.* 3. which extends not to this caſe. And ſo his Majeſtie was utterly miſtaken in the Law, in proclaming Sir *Iohn Hotham* Traytour, and declaring this act of his to be Treaſon, of his owne head, without conſulting with his Judges or Councell learned in the Lawes, who would queſtionleſſe have informed him; That this Act of his is now neither Treaſon nor Felony by the Law, had he done it of his owne voluntary accord, much leſſe ſeeing he did it onely by the Parliaments direction and command, as their Servant for the common ſafety of the Realme, excluſions of forraigne forces and Artillery, and prevention of an intended Civill-warre, without any thought of the leaſt diſobedience or diſloyalty to his Majeſtie into whoſe poſſeſſion he declared he was and is ever ready to ſurrender up the Towne, as ſoone as the Parliament ſhall command him. In a word, the *Scots* late ſeizing upon all his Majeſties Townes Caſtles in *Scotland*, and on *New caſtle* here, and detaining them againſt him

after demands, hath by his Majeſtie and both Kingdomes in Parliament beene tacitly if not expreſly reſolved and declared to be no Treaſon, being done for the publique peace and ſafety of the whole Realme of *Scotland* and *England*: Therefore much more muſt Sir *Iohn Hothams* ſeiſing but of *Hull* one ſingle Towne, and his detaining it for a ſeaſon onely for his Majeſties and the Kingdomes uſe, and the peace and ſafety of the whole Kingdome, and that by the Parliaments expreſſe command as their Inſtrument, be adjudged no Treaſon, Felony, no nor Miſdemeanor. And ſince both Houſes of Parliament the only proper Judges of Treaſon, to whom both the King & Sir *Iohn* appealed for juſtice, have upon full hearing and debating of the cauſe, voted and adjudged it, *to be no Treaſon or offence*, and publiſhed theſe their Votes in print to all the world, I cannot diſcerne, how by any Law, his Majeſtie, or his Malignant Counſellors, can poſſibly faſten any charge of Treaſon, Felony, or Miſdemeanour, on Sir *Iohn*; but muſt all conclude him to be an innocent Noble and weldeſerving Gentleman, for ſo faithfully and couragiouſly diſcharging the truſt repoſed in him by the Parliament for the whole Kingdomes peace and ſecurity, and his Majeſties ſafety too. As for his late drowning of the Country about *Hull*, to the ſpoile of much Graſſe, Corne, and great prejudice of particular men, with which his Majeſtie chargeth him in his laſt Letter to the Houſes, it is onely for the better preſervation and defence of *Hull* for the common ſafety, and therefore he may by Law juſtifie this Act, even as men in times of Warre may juſtifie the burning or demoliſhing of a Suburb for the whole Cities ſafety, and the making of Eorts and Trenches in another mans ground, for to reſiſt an invading Enemy. Which I have formerly proved Lawfull by our Lawbookes. Moreover, this drowning was through his Majeſties owne occaſion (on whom the blame muſt originally reſt) who came to beſeige Sir *Iohn Hotham* as a Traytour, and take *Hull* out of his cuſtody, (contrary to the truſt repoſed in him by the Parliament) by force of Armes with an Army of Horſe and Foote, to the open

violation

violation of the Kingdomes peace, the endangering of the whole Realme and Parliament, againſt whom this warre is principally raiſed and intended, under pretext of being avenged of Sir *Iohn Hotham*, who hath done nought but by the Parliaments direction, as their ſervant, and truſtee for the ſafe keeping of *Hull*, not againſt the King, but onely for the King and Kingdomes uſe, till it may without danger to the Realme, by Order of Parliament be rendred up into his Majeſties actuall poſſeſſion, who hath no particular Right or Title to it, but onely a generall as the Kingdomes Servant and truſtee for the peoples ſafety, which is now endangered through his Majeſties liſtening to evill Counſellours; Who whiſper to him in private, and have engaged him in a Civill-warre againſt his Parliament and people, and not hearkening to his Parliament, the Graund Counſell both of King and Kingdome, whoſe publique impartiall advice, his Royall Progenitors have alwayes moſt highly eſteemed, and followed, and thereby made themſelves great and honourable, and the Kingdome happy.

(t) See Stephen Gardiners Letter to the Lord Protector, Fox Acts and Monuments firſt Edition p. 741. b. where he affirmes (that he being Ambaſſador to Henry the 8. in the Empeperours Court, did there in a caſe of Iewells defend and maintaine by commandement of the King) that the Kings of this Realme were not above the orders of their Lawes.

The Concluſion.

I ſhall now winde up all in a few words, I ſuppoſe I have made it moſt apparently evident to every indifferent mans judgement, that Sir *Iohn Hothams* forecited Actions (with which his Majeſtie is ſo much incenſed) are neither Treaſon nor Felony by the Laws of the Land, (by which his Maieſtie hath oft lately proteſted to rule, and be guided, the *Kings of England by their Coronation Oaths being ſubject to their Lawes*, not their Lawes to them) and by the *Parliaments* Reſolution, not ſo much as a Miſdemeanour or offence, but a lawfull act done by the expreſſe commands for the publique peace and ſafety of the Realme, and prevention of a Civill warre. I appeale then to his Majeſtie, to every *Engliſh* mans or other Subjects Conſcience, and adviſe them all in the preſence of God as

(as they will answer the contrary at the great approaching day of Judgement) seriously to consider, and then resolve within their brests; whether these inoffensive Acts of Sir *John Hotham*, accompanied with all the prærecited Circumstances, be a just and sufficient ground, to the King or any of his subjects, in point of conscience or policy (especially in this season, when *Ireland* is in danger of losing, and *England* almost exhausted with necessary publique payments, With voluntary contributions, and much distracted and divided in it selfe) to raise an unnaturally bloody civill warre against *Hull*, and in it against the Parliament and Kingdome, by which the King and his Partisons will be by degrees so farre ingaged against the Parliament and his Kingdome, and they by way of just defence so farre engaged against the King and them (without Gods mercifull prevention) that we shall all now (after so long enjoyed peace) most unnaturally sheath our swords in one anothers bowells, cut one anothers throats, shed one anothers blood, burne, spoile, waste, destroy and prey upon one anothers houses, Lands, Goods, possessions, make our whole Kingdome a very Field and Sea of *English* blood, and in conclusion (without Gods interposing mercy) utterly ruine both our King, Kingdome, Parliament, Religion, our selves and our posterities, and make our Land a Prey to Popish forraigne enemies, who now rejoyce at our Divisions, (which they much foment) and thereby hope to surprize and wholly conquer us ere it be long. And if our consciences answer us, (as they will) after full deliberation, that these Acts of Sir *John Hotham* be no just cause or ground to warrant such unnaturall, bloody, fatall, destructive civill war, O let us not then once venture or presume to take up Armes against our owne deare native Country which hath bred us, against the Parliament who sit night and day, and spend both their Fortunes, time and Spirits to redresse our grievances, prevent our immanent dangers, advance our happinesse and prosperity, and preserve our long enjoyed Tranquilitie; against our deare loving brethren, kindred friends, and Countreymen, who never did us the least injury, against

our

our ſelves, our children, families, which a Civill-warre may quickly ruine, nor yet to countenance, juſtifie or ſide with thoſe unnaturall vipers, and unreaſonable ſottiſh Brutes, who either maliciouſly or inconſiderately foment, and promote ſuch an unnaturall impious cauſeleſſe civill warre. But let us all put forth our utmoſt beſt endeavours, and powre out our fervent prayers to God to prevent and ceaſe theſe civill combuſtions, to ayd and preſerve our deare Native Countrey, Kingdome, Religion, the Parliament, our ſelves and our poſterity againſt theſe malignant Incendiaries, who ſeeke their utter deſtruction. O let no true bred *Engliſh* man or Chriſtian be ſo degenerous, ſo *Barbarous* and brutiſh, as to become his owne, his deare brethrens, poſterities, Countries, Kingdomes bloody Executioner, to do ſuch diſſervice to his Countrey in a few dayes or houres, which he ſhall with bruiniſh teares repent for ever! I ſhall likewiſe humbly preſume to beſeech his Majeſtie upon the bended knees of my ſoule, moſt ſeriouſly to conſider all the Premiſes, and if upon perſual of them, there ſhall appeare no juſt or lawfull cauſe in point of conſcience and true Chriſtian (not Machivillian) policy, neceſſarily to enforce him to make a civill warre upon his Kingdome, onely for the act of one particular Subject, (as is yet pretended) which in truth amounts not by the Law either to Felony or Treaſon, if to a treſpaſſe or Miſdameanor, that then he would be moſt graciouſly pleaſed, according to his Oath, his Royall Duty, and many reiterated Proteſtations, to preſerve his people and Kingdome in a ſweet peace and bleſſed unity, to disband his preſent Forces and tumultuous Cavaliers, diſcard all bloody Counſellors who have adviſed him to a moſt unnaturall, unſeaſonable, dangerous civill warre, to returne with ſpeed to *London*, and cloſe with his great and beſt Counſell, the Parliament, for the preſervation and preſent ayd of bleeding *Ireland*, the ſetling and compoſing of his peoples preſent feares and diſtractions, the effecting of of a perfect thorough Reformation and Union in Church and ſtate the redreſſe of all remayning grievances, the advancement of Truth, of the flouriſhing eſtate of his three Kingdomes, and his owne Royall Honour, Revenues and

Greatneſſe,

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Greatneſſe, which will eternally gaine his Majeſtie the fervent Prayers, hearts, affections, purſes, and ready ſervice of all his Kingdomes and ſubjects, together with immortall honour, whereas if he ſhall ſtill proceed in proſecution of this deſperate civill warre againſt his people, Kingdom, Parliament, the guilt of all his ſubjects innocent blood, which ſhall be ſhed in this unnaturall cauſeleſſe warr, will light heavy upon his conſcience, be required at his hands, and in concluſion both himſelfe, his Kingdomes and loyall people will be brought to the very extremity of miſery, if not to utter ruine after ſuch a long enjoyed flouriſhing peace both under his owne and his predeceſſors peaceably raignes. I ſhall conclude with that of the Poet.

(u) Silius Italicus. Pan. Bellar. l. 11. f. 142.

(u) Pax optima Rerum
Homini noviſſe datum eſt; Pax vna Triumphis,
Innumeris potior; Pax cuſtodire ſalutem
Et Cives quare potens: Te petimus omnes.

O Moſt gracious Lord God, though thou juſtly plague us with thy other Iudgements for our ſinnes, yet give us not over to the ſword, the ſoareſt of all thy Iudgements, an unnaturall bloody civill warre, but
(x) Heb. 13. 20 Rom. 15 33.
(y) Pſal. 29. 11.
(z) Iſay. 26. 3.
ſince thou art a (x) *God of peace, and haſt promiſed,* (y) *to give thy people the bleſſing of peace, (which we of this Land have now uninterruptedly enjoyed almoſt an hundred yeares together through thine extraordinary mercy) do thou out of thy ſuperaboundant goodneſſe continue and* (z) *preſerve us ſtill in perfect peace whoſe hearts are ſtayed on thee. And let there be no end of our peace with thy heavenly Majeſtie, with our owne conſciences, and one with another (King with Parliament, Kingdome, and People, and they with King)*
(a) Iſay. 9. 6.
(b) Iſay. 51. 11. c. 61. 7.
till Ieſus Chriſt the (a) Prince of peace *his ſecond coming, who ſhall give all his* (b) *everlaſting peace and bliſſe in his cœleſtiall Kingdome. Amen, Amen.*

FINIS.